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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,829	01/12/2001	Stuart Berkowitz	668437600002	1904

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EXAMINER

RETTA, YEHDEGA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/759,829

Applicant(s)

BERKOWITZ ET AL.

Examiner

Yehdega Retta

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to RCE filed June 22, 2007. Applicant canceled claims 1-30 and added new claims 31-52. Claims 31-52 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (US 6,820,277) further in view of Saylor et al. (US 6,707,889)

Regarding claims 31 and 42, Eldering teaches receiving advertisements from participating advertisers at an advertisement managing server, and storing the advertisements associated with the advertisers in a data repository (col. 11 lines 20-47); receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements; determining whether the bid data is satisfactory to one or more of the participating services (col. 8 line 63 to col. 9 line 10); and upon the bid data being determined satisfactory, associating the bid data and identity of the accepting services with the appropriate advertisements in the data repository (see col. 9 lines 4-11); Eldering does not teach and upon receiving notice of a call to one of the accepting telephone services, retrieving an appropriate ad accepted by that telephone service, and providing the retrieved advertisement to the telephone service to be played as audio to the caller, it is taught in Saylor. Saylor teaches generating revenue by charging advertisers for including their advertisement content with the Vpage and so

users may access the system for free of charge. Saylor teaches the charge may be a flat fee for a period of time, a fee for each user for whom the VAd is played or otherwise (see col. 7 lines 8-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to allow the advertisers of Saylor to bid for the placement of advertisement, as in Eldering so the advertisers of Saylor can bid for the highest price they are willing to pay for the ad placement and the service provider can select the advertiser with the highest bidder.

Regarding claims 32 and 43, Eldering teaches determining that the bid data is not satisfactory to any one of the participating services, notifying the participating advertiser of the determination, receiving second bid data from the participating advertiser over the network, determining whether the second bid data is satisfactory, and repeating the determining cycle until the bid data is satisfactory, or until the advertiser stops bidding (see col. 8 line 63 to col. 9 line 8).

Regarding claims 33, 34, 44 and 45 both Eldering and Saylor teaches wherein the bid data includes a financial arrangement regarding payment for playing the audio advertisement, wherein the financial arrangement includes revenue sharing (see Eldering abstract, col. 2 lines 50-57, col. Saylor fig. 14, col. 35 lines 23-60).

Regarding claims 35-37 and 46-48, both Eldering and Saylor teaches wherein advertisements retrieved from the data repository are selected according to a user profile of a caller to which the advertisement may be played or displayed; wherein selection is made at least in part according to balanced ad usage rules; wherein selection is made at least in part according to profit rules that are used to determine which stored audio advertisement to retrieve (see

Eldering col. 2 lines 25-39, col. 11 line 39 to col. 12 line 10, see Saylor col. 7 line 60 to col. 8 line 17).

Regarding claims 38, 39, 49 and 50 Saylor teaches wherein one or more of the stored advertisements are audio files; wherein one or more of the stored advertisements are Voice XML files to be inserted into voice applications to be executed by one of the telephone services (see col. 7 line 35 to col. 8 line 40). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide voice or voice xml as in Saylor in the intended purpose of providing an audio advertisement in telephone system.

Regarding claims 40, 41, 51 and 52, Eldering teaches location identifiers to locate an audio file on a server in the network are stored in a data repository and the identifiers are used to retrieve the audio file storing a plurality of audio advertisements in a database; usage data is for their use in formulation of bid data (see col. 7 line 35, col. 8 line 54).

Response to Arguments

Applicant's arguments with respect to claims 31-52 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yehdega Retta
Primary Examiner
Art Unit 3622

YR